Supreme Court of the United States.

No. 18.—October Term, 1906.

The Territory of New Mexico ex rel. E. J. McLean & Company, Appellant, vs. The Denver & Rio Grande Railroad Company.	Appeal from the Supreme Court of the Territory of New Mexico.

[October 15, 1906.]

Mr. Justice Day delivered the opinion of the Court.

This is an appeal from the judgment of the Supreme Court of New Mexico, affirming the judgment of the District Court of Santa Fe County, sustaining a motion to quash an alternative writ of mandamus issued on the relation of E. J. McLean & Company against the Denver and Rio Grande Railroad Company.

From the allegations of the writ it appears that the relators, the appellants here, had delivered to the railroad company at Santa Fe, New Mexico, a bale of hides consigned to Denver, Colorado, a point on the line of the defendant's railroad. The railroad company refused to receive and ship the hides for the reason that they did not bear the evidence of inspection required by the act of the legislature of New Mexico, approved March 19, 1901, which act, to be more fully noticed hereafter, made it an offense for any railroad company to receive hides for shipment beyond the limits of the Territory which had not been inspected within the requirements of the law.

An objection is made to the jurisdiction of this court upon the ground that the case is not appealable under the act of Congress of March 3, 1885. (23 Stat. at Large, 443.)

Section one of the act provides, in substance, that no appeal or writ of error shall be allowed from any judgment or decree of the Supreme Court of a Territory unless the matter in dispute, exclusive of costs, exceeds the sum of $5,000. Section 2 of the act makes exception to the application of section one as to the sum in dispute, in cases wherein is involved the validity of a treaty or statute of or authority exercised under the United States, and in all such cases an appeal or writ of error will lie without regard to the sum or value in dispute.

Confessedly, $5,000 is not involved; and in order to be appealable to this court the case must involve the validity of an authority exercised under the United States, and also be a controversy in which some sum or value is involved. This court, in the case of *Lynch* v. *United States*, (137

U. S. 280–285,) laid down the test of the right to appeal under the statute in the following terms:

"The validity of a statute, or the validity of an authority, is drawn in question when the existence or constitutionality or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry."

The right to legislate in the Territories is conferred, under constitutional authority, by the Congress of the United States, and the passage of a Territorial law is the exertion of an authority exercised under the United States. While this act was passed in pursuance of the authority given by the United States to the Territorial legislature, it is contended by the relators below, appellants here, that it violates the Constitution of the United States, and is therefore invalid, although it is an attempted exercise of power conferred by Congress upon the Territory. The objection of the relator to the law raises a controversy as to the right of the legislature to pass it under the broad power of legislation conferred by Congress upon the Territory. In other words, the validity of an authority exercised under the United States in the passage and enforcement of this law is directly challenged, and the case does involve the validity of an authority exercised under the power derived from the United States. It is not a case merely involving the construction of a legislative act of the Territory, as was the fact in *Snow* v. *United States*, (118 U. S. 346.) The power to pass the act at all, in view of the requirements of the Constitution of the United States, is the subject matter of controversy, and brings the case in this aspect within the second section of the act.

Is there any sum or value in dispute in this case? While the act does not prescribe the amount, some sum or value must be in dispute. (*Albright* v. *Territory of New Mexico*, 200 U. S. 9.) The matter in dispute is the right to have the goods which were tendered for shipment transported to their destination. As a common carrier, the railroad was bound to receive and transport the goods. Its refusal so to do was based upon the statute in question because of the non-inspection of the goods tendered. The relators claimed the right to have their goods transported because the statute was null and void, being an unconstitutional enactment. The controversy, therefore, relates to the right of the appellants to have their goods transported by the railroad company to the place of destination. We think this was a valuable right, measurable in money. At common law, a cause of action arose from the refusal of a common carrier to transport goods duly tendered for carriage. Ordinarily, the measure of damages in such case is the difference between the value of the goods at the point of tender and their value at their proposed destination, less the cost of carriage. We are of the opinion that this controversy involves a money value within the meaning of the statute, and the motion to dismiss the appeal will be overruled.

Passing to the merits of the controversy, Congress has conferred legislative power upon the Territory to an extent not inconsistent with the Constitution and laws of the United States. (Rev. Stats. U. S. § 1851.) It is contended that the act under consideration contravenes that part of article one, section ten, of the Constitution of the United States, which reads: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." And also that part of the eighth section of article one of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, and among the States and with the Indian tribes.

As to the objection predicated on section ten of article one, that section can have no application to the present case, as that provision directly applies only to articles imported or exported to foreign countries. (*Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 345–50, and cases cited.) Moreover, that paragraph of the Constitution expressly reserves the right of the States to pass inspection laws, and if this law is of that character it does not run counter to this requirement of the Constitution.

The question principally argued is as to the effect of this law upon interstate commerce, and it is urged that it is in violation of the Constitution, because it undertakes to regulate interstate commerce and lays upon it a tax not within the power of the local legislature to exact. It has been too frequently decided by this court to require the restatement of the decisions, that the exclusive power to regulate interstate commerce is vested by the Constitution in Congress, and that other laws which undertake to regulate such commerce or impose burdens upon it are invalid. This doctrine has been reaffirmed and announced in cases decided as recently as the last term of this court. (*Houston & Texas Central R. R. Co.* v. *Mayes*, 201 U. S. 321; *McNiel* v. *Southern Railway Co.*, 202 U. S. 543.) While this is true, it is equally well settled that a State or a Territory, for the same reasons, in the exercise of the police power, may make rules and regulations not conflicting with the legislation of Congress upon the same subject, and not amounting to regulations of interstate commerce. It will only be necessary to refer to a few of the many cases decided in this court holding valid enactments of legislatures having for their object the protection, welfare and safety of the people, although such laws may have an effect upon interstate commerce. (*M., K. & T. R. R. Co.* v. *Haber*, 169 U. S. 613–35; *Chicago, Milwaukee etc. R. R. Co.* v. *Solan*, 169 U. S. 133; *Pennsylvania R. R. Co.* v. *Hughes*, 191 U. S. 477.) The principle decided in these cases is that a State or Territory has the right to legislate for the safety and welfare of its people, and that this right is not taken from it because of the exclusive right of Congress to regulate interstate commerce,

except in cases where the attempted exercise of authority by the legislature is in conflict with an act of Congress, or is an attempt to regulate interstate commerce. In *Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, (171 U. S. *supra*,) it was directly recognized that the State might pass inspection laws for the protection of its people against fraudulent practices and for the suppression of frauds, although such legislation had an effect upon interstate commerce. The same principle was recognized in *Neilson* v. *Garza*, (2 Woods, 287,) a case decided by Mr. Justice Bradley on the circuit and quoted from at length with approval by Mr. Chief Justice Fuller in the Patapsco case.

Applying the principles recognized in these cases to the case at bar, does the act in question do violence to the exclusive right of Congress to regulate interstate commerce? We take judicial notice of the fact that in the Territory of New Mexico, and in other similar parts of the West, cattle are required to be branded in order to identify their ownership, and that they run at large in great stretches of country with no other means of determining their separate ownership than by the brands or marks upon them. In view of these considerations, and for the purpose of protecting the owners of cattle against fraud and criminal seizures of their property, the Territory of New Mexico has made provision, by means of a system of laws enacted for the purpose, for the protection of the ownership of cattle and the prevention of fraudulent appropriations of this kind of property. The legislation upon the subject in the Territory is thus summarized in the opinion, in this case, of the Supreme Court of New Mexico (78 Pac. Rep. 74):

"The first act relating to inspection of hides was passed in 1884, and provided that all butchers should keep a record of all animals slaughtered, and keep the hides and horns of such animals for thirty days after slaughter, free to the inspection of all persons, (Compiled Laws, section 84:) and provided a penalty for failure to keep the record and the hides and horns, (sect. 86,) and a penalty for refusal of inspection of the record or hides, (sect. 87.) In 1891 all persons were required to keep hides for thirty days for the inspection of any sheriff, deputy sheriff, or any constable, or any board or inspector, or any officer authorized to inspect hides, (sect. 89,) and provided a penalty, (sect. 90.) In 1889, amended in 1895, (p. 70, c. 29, § 4), a cattle sanitary board was created, (sect. 183,) with power to adopt and enforce quarantine regulations and regulations for the inspection of cattle for sale and slaughter, (sect. 184,) and pay to inspectors not to exceed $2.50 per day and their expenses, (sect. 190.) In 1891 the cattle sanitary board was authorized and required to make regulations concerning inspection of cattle for shipment, and hides and slaughter-houses, (sect. 208,) and there was provided the details of arrangement for the inspection of cattle, (sect. 212,) and the duties of cattle inspectors were enlarged by providing: 'Every slaughter-house in this Territory shall be carefully inspected by some one of the inspectors aforesaid, and all hides found in such slaughter-houses shall be carefully compared with the records of such slaughter-houses, and

a report in writing setting forth the number of cattle killed at any such slaughter-house since the last inspection, the names of the persons from whom each of said cattle was bought, the brands and marks upon each hide, and any information that may be obtained touching the violation by the owner of any such slaughter-houses, or any other person, of the provisions of an act entitled 'An act for the protection of stock, and for other purposes,' approved April 1, 1884. For the purpose of making the inspection authorized by this act, any inspector employed by the said sanitary board shall have the right to enter, in the day or night time, any slaughter-house or other place where cattle are killed in this Territory, and to carefully examine the same, and all books and records required by law to be kept therein, and to compare the hides found therein with such records,' (sect. 213.) In 1893 it was provided that the cattle sanitary board might fix fees for the inspection of cattle and hides, (sect. 221, repealed in 1889,) and that such fees shall be paid to the secretary of the board and placed to the credit of the cattle sanitary board, (sect. 222,) and shall be used, together with funds realized from taxes levied and assessed, or to be levied and assessed, upon cattle only, to defray the expenses of the board, (sect. 220.) Chapter 44 of the Laws of 1889 makes no changes in the law material to the consideration of this case. Chapter 53 of the Laws of 1889 provides a fee of three cents for the inspection of cattle."

In *pari materia* with this legislation the act of 1901, now under consideration, was passed. Sections three and four of that act are as follows:

"SEC. 3. Hereafter it shall be unlawful for any person, firm or corporation to offer, or any railroad company or other common carrier to receive, for the purpose of shipment or transportation beyond the limits of this Territory, any hides that have not been inspected and tagged by a duly authorized inspector of the cattle sanitary board of New Mexico, for the district in which such hides originate. For each hide thus inspected there shall be paid by the owner or holder thereof a fee or charge of ten cents, and such fee or charge shall be a lien upon the hides thus inspected, until the same shall have been paid. Each inspector of hides shall keep a complete record of all inspections made by him, and shall at once forward to the secretary of the cattle sanitary board, on blanks furnished him for that purpose, a complete report of each inspection, giving the names of the purchaser and shipper of the hides, as well as all the brands thereon, which said report shall be preserved by the secretary as a part of the records of his office.

"SEC. 4. Any person, firm or corporation, common carrier, railroad company or agent thereof, violating any provision of this act, or refusing to permit the inspection of any hides as herein provided, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding one thousand dollars for each and every violation of the provisions of this act."

The purpose of these provisions is apparent, and is to prevent the criminal or fraudulent appropriation of cattle by requiring the inspection of hides and registration by a record which preserves the name of the shipper and purchaser of the hides, as well as the brands thereon, and by which is afforded some evidence, at least, tending to identify the ownership of the

cattle. It is evident that the provision as to the shipment of the hides beyond the limits of the Territory is essential to this purpose, for if the hides can be surreptitiously or criminally obtained and shipped beyond such limits, without inspection or registration, a very convenient door is open to the perpetration of fraud and the prevention of discovery.

It is argued that this act lays a special burden upon interstate commerce, because under the law hides not offered for transportation are not required to be inspected after thirty days in slaughter-houses and not at all outside of slaughter-houses. But legislation is not void because it meets the exigencies of a particular situation. Other statutory provisions apply to property remaining in the Territory where possibly it may be found and identified. When shipped beyond the limits of the Territory the means of reaching it are beyond local control, and it is the purpose of sections 3 and 4 of the act of 1891 to preserve within the Territory a record of the brands identifying the property and naming the purchaser or shipper. Certainly we cannot judicially say that there can be no valid reason for making the inspection in question apply only to hides offered for transportation beyond the Territory, and that for that reason the tax is an arbitrary discrimination against interstate traffic.

It is urged further that this is a mere revenue law and in no just sense an inspection law, and, therefore, not within the police power conferred upon the Territory. It is true that inspection laws ordinarily have for their object the improvement of quality and to protect the community against fraud and imposition in the character of the article received for sale or to be exported, but in the Patapsco case, *supra*, it was directly recognized that inspection laws such as the one under consideration might be passed in the exercise of the police power, and such was the view of Mr. Justice Bradley in *Woods* v. *Garza*, *supra*, decided on the circuit. We see no reason why an inspection law which has for its purpose the protection of the community against fraud and the promotion of the welfare of the people cannot be passed in the exercise of the police power, when the legislation tends to subserve the purpose in view. In the Territory of New Mexico, and other parts of the country similarly situated, it is highly essential to protect large numbers of people against criminal aggression upon this class of property. The exercise of the police power may and should have reference to the peculiar situation and needs of the community. The law under consideration, designed to prevent the clandestine removal of property in which a large number of the people of the Territory are interested, seems to us an obviously rightful exercise of this power. It is true it affects interstate commerce, but we do not think such was its primary purpose, and while it may have an effect to levy a tax upon this class of property, the main purpose evidently was to protect the people against fraud and wrong.

It is further urged that this law is invalid because it imposes an unreasonable fee for the inspection, which goes into the treasury of the sanitary board, and the allegations of the writ tend to show that an inspector might make a considerable sum in excess of day's wages in the work of inspecting hides under the provisions of this act. The law being otherwise valid, the amount of the inspection fee is not a judicial question; it rests with the legislature to fix the amount, and it can only present a valid objection when it is shown that it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law. (*Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. *supra.*)

We are of the opinion that the allegations of the relator as to the cost of inspection, compared with the fees authorized to be charged, and the profit which might accrue to the inspector, in view of other and necessary incidental expense connected with the inspection and registration, do not bring the case within that class which holds that under the guise of inspection other and different purposes are to be subserved, thus rendering the legislation invalid.

Upon the whole case, we are of the opinion that, in the absence of Congressional legislation covering the subject, and making a different provision, the act in controversy is a valid exercise of the police power of the Territory, and not in violation of the Constitution giving exclusive power to Congress in the regulation of interstate commerce.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.